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Supreme Court of the United States

..... Term, 1948.

No. 445

KING DAVID, and WILLIAM TALMADGE SPEARS,
Petitioners,

vs.

GEORGE A. SUTTON, Executor of the Estate of Dr. Mansfield L. Spears, Deceased, EVA MAE SPEARS, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, Deceased, and Individually, and COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS, SIXTH CIRCUIT.

I. H. SPEARS,
Attorney for Petitioners,
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Pasadena 2, California.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS, SIXTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved.

(A.) This is a suit of a civil nature in equity brought by the sole heir of Mansfield L. Spears, deceased, and King David, a legatee under the will of the decedent, each of whom is a citizen of the state of Florida, and the state of

New Jersey, respectively, against the defendants, citizens of the state of Michigan and represent the estate of Mansfield L. Spears, deceased, in the course of administration in the probate court of Oakland County, Michigan, in the federal District Court, to establish their claim against said estate, under the Constitution and laws of the United States, Article III, Section 2, and Section 24(1), 28 USCA Section 41(1), of the Judicial Code.

The subject matter consists of cash money and real estate in the state of Michigan aggregating $46,000.00 (Transcript of record pages 1 to 11).

Petitioners wish to have their respective claims or interest established by judgment of the Federal Court; William Talmadge Spears whose name is omitted from the will, and who under the laws of Michigan, inherits as if the decedent had died intestate; and King David whose interest depends upon the meaning of the will as determined by this court; the petitioners asked, determination of the interests of petitioners, declaration of heirship, interpretation of the will, quieting of title, and an accounting (Transcript pages 1 to 11).

This cause is grounded on the applicability of the Federal Constitution, Article III, Section 2, and the Laws of Congress, Judicial Code, Section 24(1), 28 USCA Section 41(1).

Petitioners allege this cause involves grave questions of vital importance to the public and these petitioners.

Petitioners allege the decree entered in this cause by the Court of Appeals Sixth Circuit on the 19th day of October 1948 deprives petitioners of their property without due process of law, and the equal protection of the law, and freedom of contract, contrary to the Federal Constitution

and laws of the United States (Transcript pages 1 to 11, 20 to 23, 32 to 36).

Petitioners allege this is a controversy within the meaning of Article III, Section 2 Constitution of the United States, and Judicial Code, Section 24(1), 28 USCA 41(1). (Markham vs. Allen *et al.*, 326 U. S. 490, Certiorari granted, 325 U. S. 846.)

Reasons Relied Upon for the Allowance of the Writ.

(a) This cause presents Federal Constitution, and Federal Law questions affecting the property, rights, privileges, and immunities guaranteed to citizens of the United States by the Constitution and laws of the United States.

(b) The decision of the Court of Appeals rendered on the 19th day of October 1948 in this cause should be reversed for the reason, we submit, that it is clearly erroneous and not in accord with the principles of applicable decisions of this court, in the following cases:

Lou Ow Bew, Petitioner, 141 U. S. 583, Certiorari granted,

Southern Power Co. vs. Pub. Serv. Co., 263 U. S. 508,

Markham vs. Allen, *et al.*, 326 U. S. 490, Certiorari granted, 325 U. S. 846,

Clark vs. Allen, *et al.*, 331 U. S. 503, Cer. granted, 329 U. S. 691, 706, and 707;

(c) The Court of Appeals Sixth Circuit also clearly erred, we submit, in failing to reverse the judgment of the District Court and requiring the defendants to answer, and, in numerous other respects as set forth in the transcript of record, pages 32 to 36, and page 39.

(d) In the interest of brevity (Rule 38 par. 2, Furness, Withy Co., Lt'd vs. Yang Tsz Ins. Assn. Lt'd, 242 U. S. 430), petitioners do not at this time set forth all of the points which will be urged at the argument on the merits of this cause, should the writ be granted, nor of the contentions in support of such points; but in order to comply with the rule of this court requiring that all issues upon which decision is requested be presented in the petition for Certiorari (Gung vs. Cooley, 281 U. S. 90, 98), petitioners here refer to and incorporate into this petition all of the matters shown on pages 1 to 11, 20 to 23, and 32 to 36, and 39 of the transcript of record with the same force and effect as if set out herein in full.

(e) Petitioners allege this Court has jurisdiction to review the judgment or decree of the Court of Appeals Sixth Circuit rendered in this cause on the 19th day of October 1948 by virtue of the Constitution and laws of the United States, Article III, and Judicial Code, Sec. 24(1), (and Judicial Code Sec. 240 Amend.) 28 USCA 347, (a) "In every case, civil or criminal, in a Circuit Court of Appeals, * * *, it shall be competent for the Supreme Court of the United States, upon petition of any party thereto, whether government or other litigant, to require by certiorari, either before or after judgment or decree by such lower court that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with the like effect, as if the cause had been brought there by unrestricted appeal." Also, 28 USC Sec. 377, (Judicial Code Sec. 262) "Power to issue writs—" "The Supreme Court shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of its jurisdiction, and agreeable to the usages and principles of law."

In re Church Building Corp., 229 U. S. 24, 57 S. Ct. 88, 81 L. ed. 16.

U. S. Beatty, 232 U. S. 463, 34 S. Ct. 392, 58 L. ed. 686;

(f) Plaintiffs-petitioners allege that the jurisdiction of this court to determine this cause on review, and the question of jurisdiction of the Federal Courts, inferior to this court, in this class of cases are put at rest, and settled by this Court's decision in Markham vs. Allen, *et al.*, 326 U. S. 490, 66 S. Ct. 296, 90 L. ed. 256, Cer. granted, 325 U. S. 846, and the same principles reaffirmed by this court in Clark vs. Allen, *et al.*, 331 U. S. 503, Certiorari granted, 329 U. S. 691, 706, 707.

Questions Presented.

I.

Has the Federal District Court jurisdiction under Article III, Section 2, Constitution of the United States, and Judicial Code, Section 24(1), 28 USCA Section 41 (1), and Judicial Code, Section 51, 28 USCA Section 112, under allegation of Diversity of citizenship, and the amount involved is in excess of $3,000.00, exclusive of interest and costs, to (a) determine the interest of claimants, legatees, devisees, heirs, or creditors in and to an estate in course of administration in the probate court of the state where petitioners seek only the establishment of their claims and do not seek to take possession of property from the state court? (b) To determine heirship? (c) To quiet title to the land described in the complaint? (d) To require an accounting by the defendants for the purpose of adjudicating the right and interest of plaintiffs, petitioners?

II.

Did the District Court err in sustaining motions to dismiss, and dismissing with prejudice?

III.

Did the Court of Appeals Sixth Circuit commit error in affirming the judgment of the District Court?

IV.

Should a Federal Court decline to hear the issues in a case grounded on Article III of the Constitution of the United States, and Judicial Code, Section 24(1), 28 USCA Section 41 (1), and Judicial Code, Section 51, 28 USCA Section 112?

V.

Has the Supreme Court of the United States jurisdiction, power and authority to determine by writ of certiorari, in its appellate capacity, the actions of the District Court, and the Court of Appeals for the Sixth Circuit in a cause grounded on Article III of the Constitution of the United States, and Judicial Code, Section 24(1), 28 USCA Section 41 (1), and Judicial Code, Section 51, 28 USCA Section 112?

VI.

Where a void judgment is set up in a motion to dismiss, may such judgment be attacked by motion to strike by parties whose property rights are affected by such void judgment in violation of the rights, privileges and immunities guaranteed to citizens of the United States by the Constitution and laws, and the due process of law clause, and the equal protection of the law provisions of the Federal Constitution and laws?

Wherefore, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of

this court directed to the United States Court of Appeals for the Sixth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a transcript of the record and proceedings herein and that the decree of the Court of Appeals for the Sixth Circuit be reversed by this Honorable Court, and that your petitioners have such other and further relief in the premises as to this Honorable Court may seem meet and just.

I. H. SPEARS,
O. H. SPEARS,
73 W. Bellevue Dr.,
Pasadena 2, California.

State of Michigan, }
County of Wayne. } ss.:

I. H. SPEARS of lawful age and being duly sworn, on oath says, the allegations and statement contained in the foregoing petition for writ of certiorari are true and correct.

I. H. SPEARS.

Subscribed and sworn to before me
this 11th day of November 1948.
W. D. Morison, Jr.,
Notary Public in and for Wayne County, Michigan.
(Seal) My Commission expires Jan. 24, 1949.

Argument and Authorities.

The Supreme Court of the United States has Appellate jurisdiction to issue Writ of Certiorari in all cases involving a construction of the Constitution and laws of the United States.

On certiorari the Supreme Court of the United States sustained the jurisdiction of the District Court, 66 S. Ct. 296, on the ground that the action was of a kind within the equity jurisdiction of the English Court of Chancery in 1789, and hence vested in the District Court by the Judiciary Act of 1789, now Judicial Code, Section 24(1) thereof, 28 USCA Section 41(1), giving equity jurisdiction to the District Courts.

Markham vs. Allen, *et al.*, 326 U. S. 490, Cer. granted 325 U. S. 846;

Clark vs. Allen, *et al.*, 331 U. S. 503, Cer. granted, 329 U. S. 691, 706, 707;

Petitioners, respectfully submit that under the record in this cause, the allegations of this petition, and the authorities cited, this Honorable Court should grant the Writ of Certiorari herein prayed.

I. H. SPEARS,
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73 W. Bellevue Dr.,
Pasadena 2, California.

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Mansfield L. Spears, deceased;
EVA MAE SPEARS, as Special Administratrix,
and Individually, and
COMMUNITY NATIONAL BANK
of Pontiac, Michigan,
Respondents

ANSWER OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI, AND CITATION OF AUTHORITIES

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Interstate Brief & Record Co., 170 East Larned St., Detroit 26, Michigan

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COMMUNITY NATIONAL BANK
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Respondents

ANSWER TO PETITION FOR WRIT OF CERTIORARI

Paragraph VIII of the Will of Mansfield L. Spears, deceased, bequeathed the "residue" of his estate to his heirs at law (R. 7), and Wm. Talmadge Spears, (deceased's son by a former wife) appeared in the Probate proceedings, by his present attorney, and claimed to be deceased's sole heir (other than Eva Mae Spears, the widow).

The Deceased, prior to his death, had maintained a joint bank account with his wife, Eva Mae Spears, in the Community National Bank of Pontiac, Michigan, in which account there was a balance of approximately $18,-196.00 when he died. The said son, and King David, the appellants herein, claimed that undue influence had been exerted upon deceased by the widow, in the making of the will and the creating of said "joint" bank account; whereupon the widow comenced action in the Chancery Court of Oakland County, Michigan, to determine the ownership of said bank account. A lengthy trial was had, resulting in a Circuit Court decree, holding that the money in the account had survived to the widow, Eva Mae Spears, and was no part of the deceased's estate (R. 15-17).

William T. Spears, King David, et al. (by their present attorney) also contested deceased's will by appeal to the Circuit Court of Oakland County, where trial was had. That trial resulted in a judgment sustaining said Will.

Appellants herein (by I. H. Spears, their present attorney) thereupon appealed from both county court decisions to the Supreme Court of Michigan, and in the meantime commenced the action now before this Court, in the U. S. District Court at Detroit, in which complaint it was alleged that said $18,196.00 bank account was still a part of deceased's estate (R. 3).

It then became known to the Oakland County Michigan Bar Association that I. H. Spears had obtained a Court Order admitting him to practise in Michigan, temporarily, upon his representation that he was a licensed practicing attorney in good standing, of the State of Florida, and also that his representations in that regard were false and untrue; that he had been admitted to practice in Florida about the year 1909, but that he had been indicted there for some alleged criminal offense; tried

before a jury and convicted, and sentenced to prison; that he had appealed to the Supreme Court of Florida, and upon such appeal the verdict had been set aside and a new trial ordered—on the ground that the prosecutor had failed to elect on which of three counts he relied for conviction—(See *Florida v. Spears* 59 Fla. 44 (51 So. 815)); and that a second trial was never had, but that thereupon (about the year 1911) the said I. H. Spears had moved out of the state of Florida and has not lived nor practiced there since. Said Bar association also learned that I. H. Spears has lived in California for the last 16 years, during which period he has been denied license to practice law in that State—because of his previous record. Consequently, upon Petition of the Oakland County Bar Association, the Oakland County Court, and also the Supreme Court of the State of Michigan, entered orders cancelling his right to continue to practise law in Michigan.

Thereafter, I. H. Spears, presented to the Michigan Supreme Court what he claimed were assignments to himself of his clients' interests in the subject matter of the litigation, and asked to be substituted as party appellant. Upon refusal of his request he pretended a Federal question had been raised, and appealed to this—the United States Supreme Court—in both cases (See Nos. 1286 and 1370, October Term 1946). Both appeals were dismissed for "want of jurisdiction," June 2, 1947.

The final disposition of the above mentioned litigation, permanently established the ownership of the $18,196.00 bank account as being in Eva Mae Spears, rather than a part of the Estate of Mansfield L. Spears, as alleged in the Federal Court Complaint in this cause.

The final account filed by the executor of said Estate showed the total net assets of said estate to be less than

$5,000.00, consequently, since the will contains specific legacies totaling $16,000.00, it is evident that appellants herein have no interest whatever in the subject matter of the litigation here involved.

The complaint filed in this action prays for a determination of heirs, but the Final Account as allowed by the local Probate Court found and determined appellant Wm. Talmadge Spears to be the sole heir of deceased—so that no contest exists on that point; and unless there is a dispute or contest the Federal Court was without jurisdiction.

This action is a mere attempt to open up and set aside the probate proceedings already concluded in the State Court, and obtain a secondary Probate of said Estate, and the Federal Court is without jurisdiction.

> *Guilfoil v. Hayes* 86 Fed. (2d) 544 (C. C. A. 4).
> *Broderick's Will* 88 U. S. 503.

Nor can the Federal Court seize and control property which is in the possession of the State Court.

> *Waterman v. Bank* 215 U. S. 33.
> *Markham v. Allen* 326 U. S. 490.

Nor can the Federal Court require an accounting of an executor of an estate being probated in the State Court.

> *Waterman v. Bank* 215 U. S. 33.
> *Princess Lida v. Thompson* 305 U. S. 456.

The Federal Court will not assume jurisdiction over the matters involved in litigation in a state court where the subject matter is *in rem*, and this belongs to that class of actions.

Broderick's Will 88 U. S. 503.
Sutton v. English 246 U. S. 205.
Farrell v. O'Brien 199 U. S. 89, 110, 111.
Calhoun v. Crocknell 202 Mich. 430.
Thompson v. Thompson 229 Mich. 526.
Markham v. Allen 326 U. S. 490.

The State Circuit Court decree holding the $18,196.00 bank account was no part of Mansfield L. Spears' estate was not void, as claimed by appellants, and it was necessary to apply to that Court to obtain such a determination. A Probate Court, in Michigan, is without jurisdiction to try or determine title to either personal or real property.

Mitchell v. Bay County Judge 155 Mich. 550 (119 N. W. 916).
Rudolph v. Gilbert 209 Mich. 141 (90 A. L. R. 134 note).

CONCLUSION

It is accordingly respectfully submitted that the District Court of United States of the Eastern District of Michigan, reached a proper conclusion upon the motion to dismiss as filed, and that the subsequent decision of the United States Circuit Court of Appeals for the Sixth Circuit was correct in sustaining the dismissal of said action by the lower Court, and that this application for Writ of Certiorari should be denied.

Respectfully submitted,

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